



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HAROB HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC MNDCT OLC PSF RR

### Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by Property Manager, L.Z. (the “landlord”). Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other’s evidentiary package, while the landlord confirmed receipt of the tenant’s application for dispute resolution by way of Canada Post Registered Mail. Pursuant to section 88 & 89 of the *Act* the landlord is found to have been duly served with the tenant’s application, and both parties are found to have been served with each other’s evidentiary package.

Following opening remarks, the tenant informed the hearing that she had vacated the rental unit as of December 15, 2017 and was no longer pursuing the matters related to a cancellation of the 1 Month Notice, to Provide Services or Facilities Required by law, to reduce the rent for repairs, services or facilities agreed upon but not provided, and for an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*.

I have amended the tenant’s application pursuant to section 64(3)(c) to reflect this request.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award?

### Background and Evidence

Undisputed testimony presented by the tenant explained that this tenancy began in August 2016 and ended on December 15, 2017. Rent was \$1,550.00 at the outset of the tenancy and rose to \$1,607.00. A security deposit of \$775.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant said that she was seeking a monetary award of \$13,178.89 reflecting the loss of quiet enjoyment she purported to have experienced throughout the duration of her tenancy.

During the course of the hearing, the tenant alleged that numerous contraventions of the building's non-smoking rule occurred and were improperly addressed by the landlord. She argued that despite her repeated attempts to bring these infractions to the building manager, she was denied assistance. In addition, the tenant said that numerous instances of excessive noise from other suites in the rental building took place and that these too were ignored by the building manager. The tenant explained that the issue of smoking in the building was particularly difficult for her to accept because the smoke exacerbated her allergies. She stated that one of the main reasons she took an apartment in the building was because it was advertised as a non-smoking building.

As part of her evidentiary package the tenant included a very detailed ledger which showed all of the noise complaints and issues around smoking that she recorded throughout her tenancy. The landlord acknowledged reviewing this ledger on July 9, 2017 after a meeting was arranged with the tenant. The landlord argued that many of the complaints levelled by the tenant against other occupants of the building were over-exaggerated by the tenant and not justified. The landlord agreed that some instances of smoking had occurred in the building, but he explained that numerous warnings letters were sent to various tenants regarding these infractions. He continued by noting that he had not received similar complaints from other residents in the building and that the tenant had directed her displeasure towards numerous people in the rental building, not simply any one suite.

The landlord detailed the 3 step process that he follows with occupants of the building after any complaints are received, and said that he addressed every complaint which was submitted, saying, "it is our responsibility to deal with these issues." In addition, the landlord explained that offers were made to relocate the tenant to another nearby building, free of any obligations to her lease. He informed that the tenant rejected this offer.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must

then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Testimony provided by the tenant, along with a detailed ledger of her accounts chronicled various instances of smoking and noise that occurred in the building throughout her tenancy. I acknowledge that while the tenant was consistent in her descriptions and accounts of the wrongdoings of the other residents in the building, I find that the landlord took the tenant's complaints seriously and made efforts to ensure that the tenant was able to enjoy a problem free tenancy. I find that significant efforts were made by the landlord to address the tenant's complaints. These included, speaking to residents of the building whom the tenant had identified as problematic, and the writing of formal warning letters to other residents who the tenant had complained about. Additionally, the landlord offered to re-house the tenant in another, nearby building that he suspected would better suit her needs. For these reasons, I dismiss the tenant's application for a monetary award.

### Conclusion

The tenant's application for a monetary order is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 21, 2017

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Residential Tenancy Branch